



# WYOMING STATE STATUTES AND COURT RULES

# State Laws Handout (including other courts and proceedings)

## Chapter 3

- Child Protection Act
- Covers all abuse/neglect cases

## Chapter 6 Article 2

- Juvenile Justice Act
- Covers delinquencies

## Chapter 6 Article 4

- Children in Need of Supervision Act
- Covers CHINS



# RULES OF PROCEDURE FOR JUVENILE COURTS IN WYOMING

# Rules of Evidence (Rule 1D)

- Rules of Procedure for Juvenile Courts state that the Rules of Evidence apply in Juvenile Court



# Youth in Court (Rule 2A)

- Very important!
- CHINS and Delinquency kids must go to court.
- A/N kids shall go
  - ▣ unless they are not of a suitable age to understand or participate in the proceedings. (can still go, just aren't required to go)

# Closed Proceedings (Rules 2B&C)

- Generally, public is excluded and foster parents are allowed.
  - ▣ But, Court can allow certain individuals with an interest to the hearings.
  - ▣ And can also exclude foster parents if it is in the best interest of the child or necessary to protect privacy.
- Delinquency proceedings – victims of the delinquent act and members of their immediate families may be present at the hearing.



# Foster/Relative Caregivers (Rule 2D)



- DA/CA must provide written notice of hearing
- Right to be heard
- Doesn't make them a party; not required to be party to receive notice and opportunity to be heard

# Discovery – Rule 3

- Discovery by State – “without the necessity of a request, the State shall, within 30 days of service of the petition, furnish to the Respondent and GAL”
  - ▣ Generally - Any material or information within the State’s knowledge, possession or control (which includes DFS and law enforcement).
  - ▣ Lots of specifics in the Rule.
    - Specifies 8 separate things subject to discovery.



# Discovery – Cont.

- Obligations on discovery extend to
  - ▣ material and info in possession or control of any prosecutorial staff or any other who have participated in the investigation or evaluation of the case AND
  - ▣ records created or held by DFS.
- DFS Records should be requested through the state. Upon request, DFS gives records to State and GAL. State can release records or contest release. Records still subject to 14-3-214 (confidentiality).
- DA/CA compliance can be by advisement in writing or on the record that the Respondent and GAL can inspect the records at any time during normal business hours.
  - ▣ Except exculpatory info – must be sent promptly, not available for inspection.

# Discovery – Cont.



- Not subject to discovery:
  - ▣ Work product
  - ▣ Identity of a confidential informant (within constitutional parameters)
  - ▣ Anything the court orders not disclosed.

# State/GAL Discovery (Rule3E)

- Upon written request of the State or GAL, when pertinent to the issues and upon a showing of good cause, the court may order the Respondent to:
  - ▣ Appear in a lineup
  - ▣ Speak for identification
  - ▣ Be fingerprinted
  - ▣ Pose for photographs
  - ▣ Try on articles of clothing
  - ▣ Permit the taking of specimens under fingernails
  - ▣ Permit taking of blood, hair and other material (reasonable intrusion)
  - ▣ Provide handwriting specimen
  - ▣ Submit to reasonable physical or mental examination.

# State/GAL Discovery – Cont.

- Upon written request of the State or GAL, the Respondent shall:
  - ▣ Produce the names and address of each person the Respondent intends to call as a witness at any hearing
  - ▣ Produce and permit inspection and copying of all written reports from experts Respondent intends to call
  - ▣ Furnish the name and address of each witness whom the Respondent intends to call as a witness to show he was not present at the time, place and date designated by the State or GAL in the request.

# Discovery Misc. – Rule 3

- Time
  - ▣ State required to disclose within 30 days of petition
  - ▣ Respondent and GAL must furnish requested discovery within 30 days from request
  - ▣ The court can extend for good cause
- If not furnished, motion to compel may be filed
  - ▣ Shall specify items not furnished
  - ▣ Court shall hold a hearing on the motion to compel within 3 days of filing
  - ▣ Sanctions for failure to comply with discovery rule:
    - Order disclosure
    - Strike testimony to which the undisclosed matter relates
    - Grant a continuance
    - Prohibit party from introducing nondisclosed matters
    - Grant a mistrial
    - Or another order appropriate under circumstances.

# Discovery Misc. – Cont.



- Continuing Duty to Disclose.
- Court can issue a protective order on discovery if a party motions and shows good cause.
- Timely disclosure is required.
  - ▣ Must be furnished in time to permit its beneficial use.



# Submittal of Reports – Rule 4

- Must be submitted no later than five business days prior to the hearing.



# Right to Counsel – Rule 5

- “The Respondent is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule.”
  - ▣ Abuse/Neglect – parents
  - ▣ CHINS – juvenile
  - ▣ Delinquency – juvenile
- Respondent must be advised of the right to counsel at hearing and also served with written advice of the right to counsel with any order setting an initial hearing.
  - ▣ Written notice advise them of the right, tell them to fill out the financial affidavit and present it to the court 5 days before hearing.
- Respondent can waive the right to counsel in accordance with 7-6-107.

# Pretrial Matters – Rule 6&7

- Court may hold a pretrial conference
- Parties may stipulate to any matter, including adjudication and disposition
  - ▣ Except if the stipulation contravenes the statute
  - ▣ Court doesn't have to accept the stipulation if the court determines a party didn't understand their rights and didn't have a sufficient opportunity to consult with counsel



# CASA – Rule 8

- Assigned by the CASA Program, if the court Orders their involvement
- Must be trained and screened in accordance with national standards
- Serve at pleasure of the court, must be sworn in by the court before service
- Serve the best interests of a child in abuse or neglect actions
- Role is separate from GAL, but GAL and CASA are expected to collaborate and cooperate

# Duties of CASA

- Serve the best interests of a child in A/N proceedings
- Provide independent, factual info, including a written report to each party regarding the case
- Submit the written report at least 5 days prior to dispositional or other post-adjudicatory hearing involving the child
- Be allowed to observe all depositions, pretrial conferences and hearings
- Have access to review and make copies of all DFS records regarding the child and the family with the consent of the GAL
- Have access to review and make copies of the court file
- Receive reasonable notice from DFS of changes in placement, school or any other change in circumstances affecting the child
- Monitor cases to which they are appointed to assure orders are followed and time permanency is achieved
- Ascertain the wishes of the child and assist in making the wishes known to the parties

# Inadmissible Evidence – Rule 9

## □ Agreements

- ▣ State can enter into an agreement or plea bargain that info from MDT or juvenile proceeding will not be admissible in a subsequent criminal proceeding arising from the same episode
  - Automatic?
  - Doesn't prevent law enforcement from independently producing same facts, info or evidence; if they procured it independent from the MDT or juvenile proceeding.

## □ Confidentiality for Juvenile's Statements

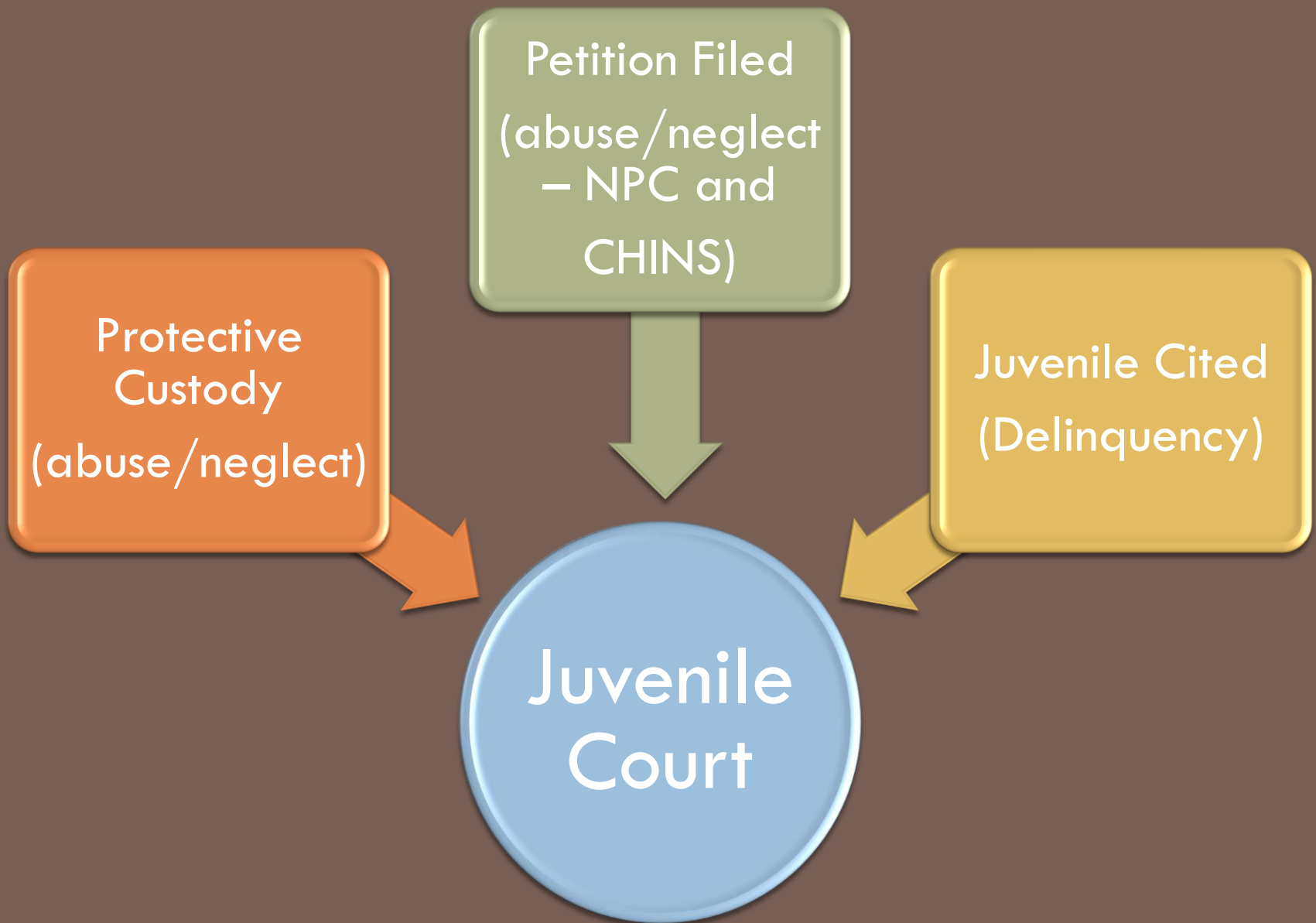
- ▣ A juvenile's admissions or incriminating statements to a professional made in the course of ordered treatment in juvenile court shall not be admitted into evidence in any criminal or delinquency case
  - Exceptions:
    - With juvenile's consent
    - This privilege does not apply to statements regarding future misconduct



# Concurrent Criminal and Juvenile Proceedings – Rule 10

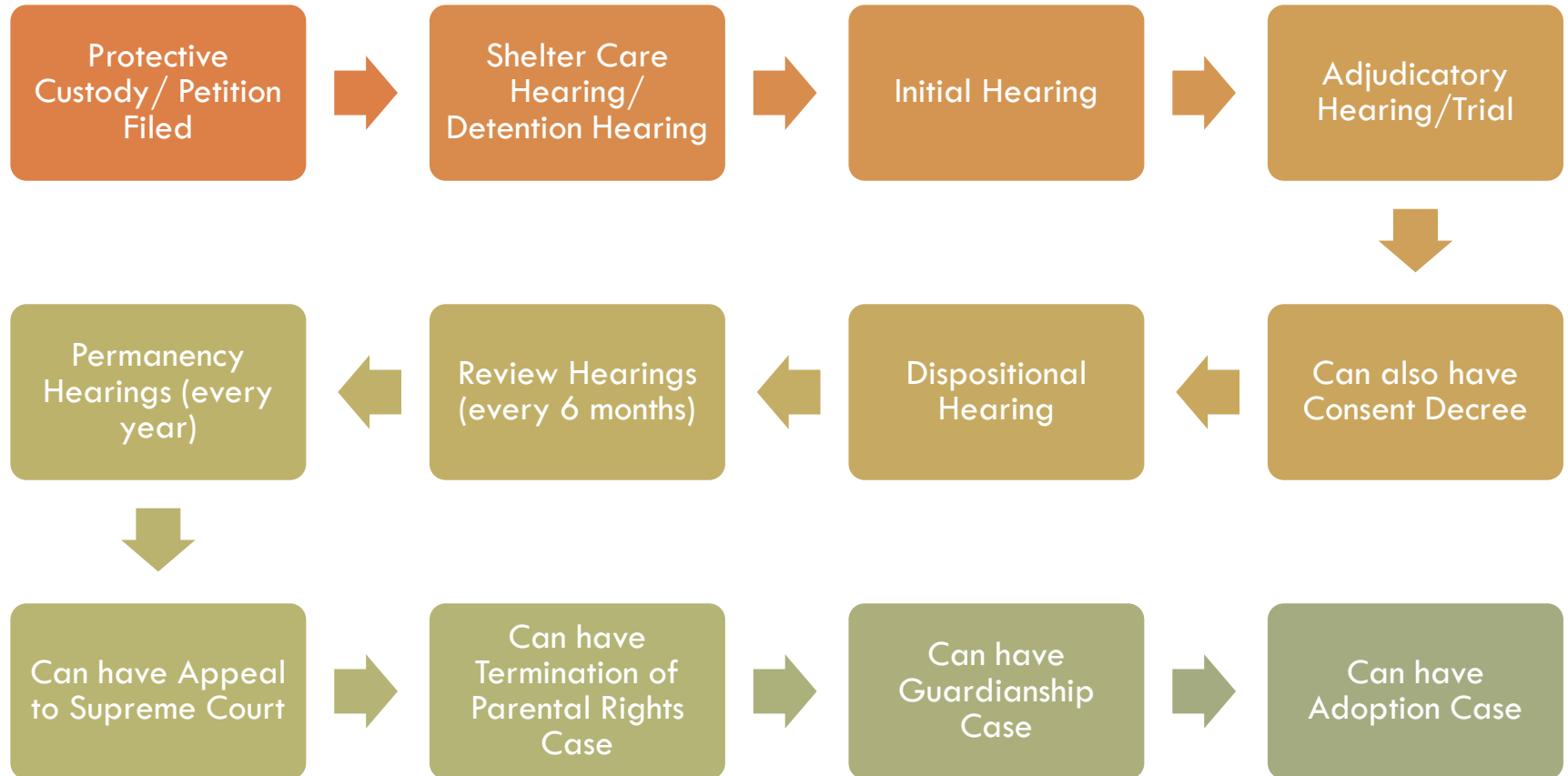


- Can't delay or stay a Juvenile action pending a case in district or circuit court
- All juvenile Court proceedings shall proceed pursuant to the timelines set forth by Title 14



HOW A JUVENILE CASE STARTS

# Juvenile Court Process





# ANATOMY OF AN ABUSE/NEGLECT CASE

# Wyoming Statutes



- Title 14 – Children
  - ▣ Chapter 3 – Protection
    - Article 2 – Child Protective Services
      - Duties of DFS, Central registry, confidentiality of records, etc.
    - Article 4 – Child Protection Act
      - Statutes relating to proceeding

# Reporting Suspected Child Abuse

## □ 14-3-205

- ANY person who suspects, has reason to suspect or who has observed conditions that would result in abuse or neglect SHALL report to local child protection agency or law enforcement.
- Mandatory (includes attorneys, should counsel your clients about this at beginning of representation)



# 14-2-304 – Duties of DFS

- Receive, assess or investigate all reports of known or suspected child abuse or neglect
- Within 24 hours after a report, initiate an investigation or assessment
- At initial contact with respondent advise the person of specific complaints or allegations made against them

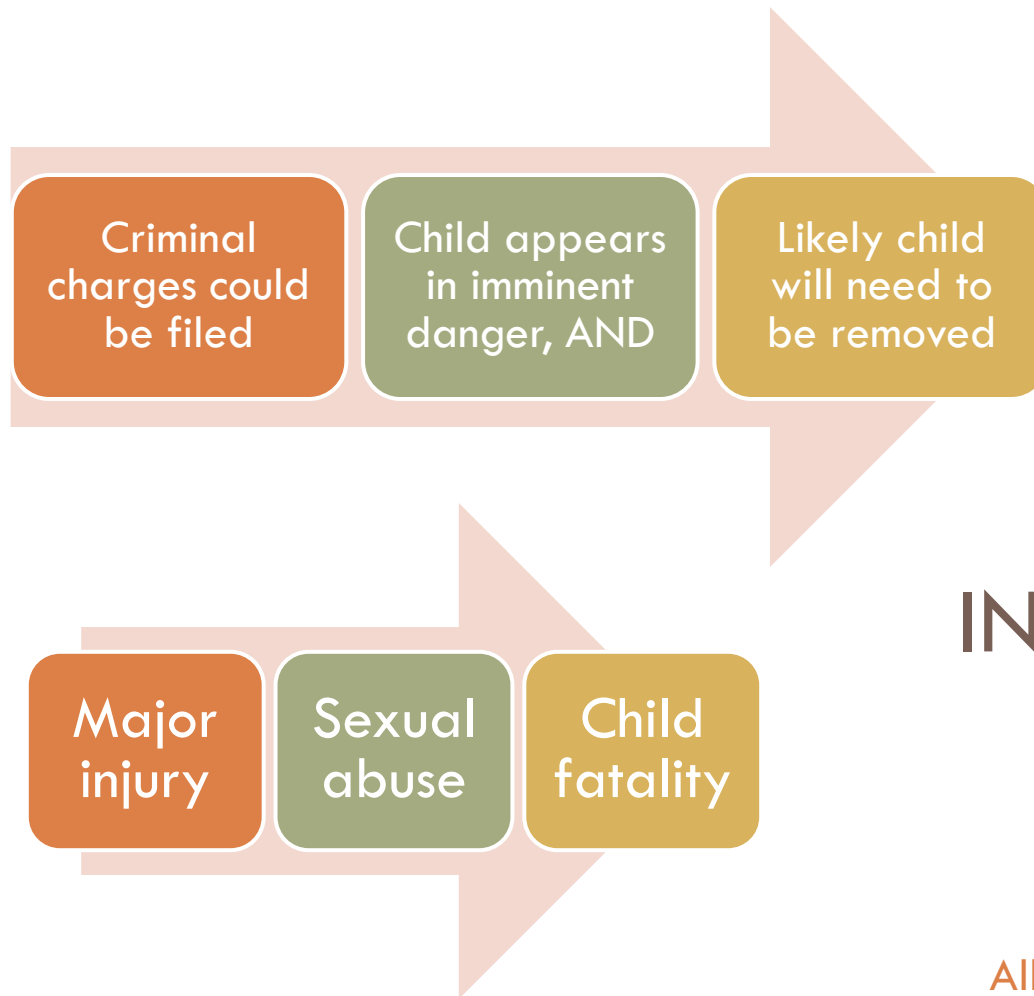


# Central Registry

- 14-3-213
- Maintained by DFS



# Two Tracks (decided at intake)



INVESTIGATION

All other reports -> ASSESSMENT

# Definition of Neglect

Failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's well being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone.

W.S. § 14-3-202(a)(vii), see also Child and Family Services Rules, Chapter 1, Section 4 (s).

# Definition of Abuse

Inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, unless the abandonment is a relinquishment substantially in accordance with W.S. § 14-11-101 through 14-11-109, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason or intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law.

W.S. § 14-3-202 (a)(ii), see also DFS, Child and Family Services Rules, Chapter 1, Section 4(b).

# Temporary Protective Custody

- W.S. 14-3-208 & 14-3-405
  - ▣ Can be taken if reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings or child's conduct or behavior seriously endangers himself
  - ▣ Can be taken by physician, physician's assistant, nurse practitioner or law enforcement





# Temporary Protective Custody (cont.)

- Person taking PC immediately notifies DFS and DFS accepts physical custody of child
- DFS must make reasonable efforts to inform parents/guardians (including NCP). – Start of diligent search!
  - ▣ Places child in most appropriate and least restrictive setting necessary. When in best interests of child, child shall be placed with NCP or other family. Cannot be placed in jail or detention facility.
  - ▣ Initiate investigation.
  - ▣ Assess child's mental and physical needs.
  - ▣ Arrange for child's education.
  - ▣ Participate in MDT meetings to develop treatment recommendations for the child.
- Cannot exceed 48 hours.

# Attorneys

- GALs – 14-3-211
  - ▣ Mandatory appointment of GALs in all abuse/neglect proceedings.
  - ▣ Appointed as hybrid model, unless Court appoints two attorneys for that child, and then one attorney is direct representation and other is straight best interests.
  - ▣ Also speaks of GAL appointment in 14-3-416.
- Attorneys for Parents
  - ▣ Right to be represented by counsel and to employ counsel of their own choice. Parents can request attorney appointed by the court if can't afford, must verify finances under oath.
- Attorneys for Other Parties
  - ▣ “The court may appoint counsel for any party when necessary in the interest of justice.” (also in 14-3-422(c))

# Start of Neglect Proceedings



- CA/DA has discretion to file action.
- Process starts with the filing of a verified petition.
- Notice given to appropriate parties.

# Shelter Care Hearing

- Must be held within 48 hours of TPC.
- Written notice w/ time, place and purpose of hearing to child and parents, guardian or custodian.
- Don't forget about ICWA! (different standards and placement preferences)
- Must show child is in imminent danger for continued shelter care. (defined 14-3-202(a)(ii)(D).
- 14-3-409 addresses shelter care hearings
- Don't forget the federal law!
  - ▣ I-VE finding of contrary to the welfare

# Initial Appearance

- Advisement of Rights to Respondents
  - ▣ Right to counsel; copy of charges against him/her, confront and cross-examine witnesses; introduce evidence, present witnesses; issuance of process
- Advised of specific allegations in petition
- Advised of liability for costs of treatment and services
- Opportunity to admit or deny allegations
- Can also have shelter care hearing and initial appearance together.
- Can also have a consent decree.
- If admit – go to disposition
- If deny – go to adjudication

# Abeyance by Consent Decree

- Agreement by parties that allegations to be held in abeyance
- Consent of DA/CA, GAL and parents
- In writing and must include family service plan
- Can be revoked for failure to comply
- Statute limits to 6 months in length with only one 6 month extension. (if child is in out-of-home placement)
- 14-3-428

# Adjudication

- Bench or jury trial
- Set w/in 60 days or for good cause can be set w/in 90 days
- Burden of proof is preponderance of the evidence
- GAL presents evidence on behalf of client just like every other trial or hearing. GAL does not testify or make statements that cannot be proved with witnesses.
- If adjudicated, move on to dispositional hearing. If not adjudicated, case is dismissed.

# Disposition

- Can be held immediately after adjudication or within 60 days after.
- Before placing a child outside of the home, the court shall find by C&CE that to return the child to the child's home would not be in the best interest of the child despite efforts that have been made.
- Court shall ensure RE have been made by DFS.
- Duration of disposition orders
  - ▣ Indefinite period
  - ▣ Unless sooner terminated, when child reaches age 18 unless court orders otherwise



# Disposition & Out-of-state Placements

- Court shall not order an out-of-state (OOS) placement unless:
  - ▣ Evidence has been presenting to court re costs of OOS and in-state (IS) placement and whether or not an IS facility is available or currently available
  - ▣ Affirmative finding on record that no placement in Wyoming can provide adequate treatment or services for the child; AND
  - ▣ Court states on record why no IS placement is available.

# Placements

- Be sure the if a child is in a placement, the placement is:
  - ▣ Adequate (basic needs being met);
  - ▣ Least restrictive;
  - ▣ Least expensive;
  - ▣ Educationally appropriate (21-13-315(e));
  - ▣ Treatment is being provided; and
  - ▣ Child is not overly medicated;
  - ▣ Ensure proper discharge planning is conducted prior to transition back into the community.

# Review Hearings

- Review hearings required every six months from the date of the child's removal from home and every 6 months thereafter. W.S. 14-3-431 (c)
- “Court shall review the case plan to determine:”
  - Health and safety of child
  - Continuing necessity for placement
  - Appropriateness of placement
  - REs made by DFS
  - Appropriateness of case plan and compliance with case plan
  - Extent of progress toward alleviating or mitigating causes necessitating placement
  - Date child is expected to be returned to the home or achieve permanency

# Review Hearings

- Appropriateness of family service plan and extent of compliance
- Progress toward alleviating or mitigating the causes necessitating placement
- Date child expected to be returned home or placed for adoption or guardianship



# Permanency Hearings

- No later than 12 months from dates of child's removal and every 12 months thereafter. W.S. 14-3-431 (d)
- Also held within 30 days of determination that RE are not required.
- Court makes determination of RE as outlined in 14-3-440.
- Also determines whether permanency plan is in best interests of child.

# Permanency Hearing (cont.)

- At hearing DFS shall present to the court:
  - ▣ the efforts made to effectuate the permanency plan for the child,
  - ▣ address the options for permanency,
  - ▣ examine the reasons for excluding permanency options, and
  - ▣ set forth the proposed plan to carry out the placement decision, including specific times for achieving the permanency plan.
- DFS must also present to the court a compelling reason for establishing a permanency plan other than reunification, adoption or legal guardianship.
- Hierarchy of Permanency
  - ▣ Reunification
  - ▣ Placement w/Fit and Willing Relative
  - ▣ Adoption
  - ▣ Guardianship
  - ▣ APPLA

# Appeal

- Any party may appeal any final order, judgment or decree of the juvenile court.
- GALs can appeal for the child.
- Can also bring writ or stay.
- Rules of Appellate Procedure govern briefs and oral argument.





MDTS



# MDT



- ❑ Multi-Disciplinary Team Meetings
- ❑ Required by statute in dependency, CHINS and delinquencies.
- ❑ Within 10 days of Petition, Court shall appoint an MDT.

# Shall include:

- Child's parent(s) or guardian(s);
- Representative of the school district and if child is on IEP, must be member of IEP team;
- Representative of DFS;
- Child's psychiatrist, psychologist or mental health professional;
- DA/CA or designee;
- Child's attorney and/or GAL;
- CASA, if one;
- Foster parent.

# May include:

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- The child (very important for them to be involved);
- A relative;
- Representative of Dept. of Health's substance abuse, mental health or DD division if special needs for child or parent;
- Other professionals or persons having particular knowledge (including linguistic, cultural or disability needs);
- Any other lay members.

# Recommendations

- MDT team presents recommendations to the Court.
- In formulating rec., must give consideration to:
  - ▣ Best interest of the child;
  - ▣ Best interest of the family;
  - ▣ Most appropriate and least restrictive case planning options; and
  - ▣ Costs of care.

# Misc.



- MDTs are confidential.
- If child placed outside of home, MDT must meet quarterly.
- MDT report must be filed no later than 5 business days prior to hearing.



A BIT ABOUT TPRs AND ABUSE/NEGLECT

# TPR from Abuse/Neglect Case

- Required if child in placement for 15 of 22 unless:
  - ▣ Child is in care of relative
  - ▣ State agency has documented in the case plan a compelling reason why TPR is not in best interests of child
  - ▣ Or state agency has not provided services to the child's family necessary for safe return of the child to the home (Reasonable Efforts 14-3-440)
- Required to file within 60 days of judicial determination that RE are not required.

# Who can file?

- ❑ Either parent;
- ❑ Guardian or legal custodian of the child; or
- ❑ An authorized agency.

The authorized agency in state action TPRs is DFS. The DA/CA or AG files the TPR on behalf of the agency.



# Wyoming Statutes

- Title 14
  - Children
    - ▣ Chapter 2
      - Parents
        - Article 3
          - Termination of Parental Rights



# Grounds for TPR in Wyoming

- 14-2-309
- Seven separate grounds with separate elements.
- Can allege more than one. 14-2-309(a). In re SJJ (2005).
- Don't have to prove more than one to terminate. (*In re SJJ* 2005)
- Must prove by Clear and Convincing Evidence.

# Questions?

